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Referring to such statements, the court further said:

You will take those facts into consideration, and determine whether or not it was the intention of this language, interpreting it as an ordinarily intelligent man would, on the part of the claimants to convey the impression that they were to cure or act as a remedy for the diseases and ailments, even where the language does not directly say so. If it was the intention to so frame a statement that it conveyed those impressions, and those statements were false, and they are known to be false, or you can infer the intention to defraud, then it would be your duty to return a verdict in favor of the Government. If you do not find that intention, of course, you will return a verdict in favor of the defendant.

So, also, in answer to points, the court said, in substantial accord with Cooper *v.* Schlesinger, 111 U. S. 148, 4 Sup. Ct. 360, 28 L. Ed. 382, and Lehigh Co., etc., *v.* Bamford, 150 U. S. 665, 14 Sup. Ct. 219, 37 L. Ed. 1215:

If you find it as a fact that the statements were false, and known to be false, then, of course, your verdict would be for the Government. If you find as a fact that they were not false, or that, being false, there was no intent on the part of the defendant, whether actual intent or implied intent, to defraud, then your verdict would be for the claimant.

If you believe from the evidence that any one of the therapeutic claims as to the effect of these pills upon locomotor ataxia, St. Vitus' dance, sciatica, rheumatism, impotence, spermatorrhea, or partial paralysis was false, and was made by the claimant with a reckless and wanton disregard as to whether it was true or false, you may find a verdict for the Government.

On the whole, we may say the cause was properly tried and fairly submitted, and finding no error in the rulings, charge, points, or answers in the court below its decree is affirmed.

WISCONSIN SUPREME COURT.

Sewage Disposal—Pollution of Streams—City Held Liable for Damages.

JOHNS *v.* CITY OF PLATTEVILLE. (May 2, 1916.)

Suit was brought against the city of Platteville, Wis., for damages and to enjoin the maintenance of a nuisance. The facts were stated by the court, as follows:

The defendant city disposes of its sewage by treating the same in septic tanks. Tank No. 1 is located some distance from plaintiffs' land, and the water discharged from the tank, referred to as the effluent, is conducted through a pipe to a point on the public highway near plaintiffs' property, and there discharged into Rountree Branch, a small creek which flows southerly from the place of discharge over the plaintiffs' land. Plaintiffs claim that the discharge from the tank renders the water of the stream foul, contaminated, impure, poisonous, not fit for domestic use or to be drunk by animals of any kind; that the deposit from the tank gives rise to noxious, unwholesome, poisonous smells and stenches, causing great annoyance and discomfort to plaintiffs and their families. Plaintiffs ask that the discharge of sewage in the manner alleged be declared to be a public nuisance, and that it be declared to be a private nuisance, and [ask] for damages, and that the nuisance may be abated. The answer of the defendant city denies the principal allegations of plaintiffs' complaint, alleges that the effluent is not impure, and that the stream is not contaminated, and that no nuisance exists. The cause was tried before the court without a jury, and the court found upon all the issues in favor of the defendant, and gave judgment directing that plaintiffs' complaint be dismissed, and from the judgment so entered plaintiffs appeal.

Mr. Justice Rosenberry quoted from Winchell *v.* City of Waukesha (110 Wis., 101, 108), as follows:

The right of the riparian owner to the natural flow of water substantially unimpaired in volume and purity is one of great value, and which the law nowhere has more persistently recognized and jealously protected than in Wisconsin. Not alone the strictly private right, but important public interests, would be seriously jeopardized by promiscuous pollution of our streams and lakes. Considerations of esthetic attractiveness, industrial utility, and public health and comfort are involved. * * * The great weight of authority, American and English, supports the view that legislative

authority to install a sewer system carries no implication of authority to create or maintain a nuisance, and that it matters not whether such nuisance results from negligence or from the plan adopted. If such nuisance be created, the same remedies may be invoked as if the proprietor were an individual.

The testimony was conflicting. The evidence for the plaintiff showed that the water of the stream was dark and emitted bad odors, especially in the summer time. The city introduced an expert witness who testified that in October and November, 1914, when he examined the stream, conditions were not objectionable. The circuit court apparently accepted the testimony of the expert as conclusive and gave judgment for the defendant city, but the supreme court decided that the evidence showed that the water of the stream had been contaminated and rendered unfit for domestic purposes or for use of stock, and that a nuisance had been created. The judgment of the lower court was reversed and the cause was remanded for further proceedings, the circuit court being directed to assess damages against the city upon the evidence already taken, or to take further testimony, as it might determine.

The opinion is reported in full in 157 Northwestern Reporter, 761.